

**DRAFT**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF SUNNYVALE  
AND NICHOLS CONSULTING ENGINEERS, CHTD FOR DESIGN AND  
CONSTRUCTION SUPPORT SERVICES FOR THE 2003/2004 MEASURE B  
STREET PAVEMENT MAINTENANCE AND CITY STREET MAINTENANCE OF  
EFFORT (MOE) PROJECT  
(ST-03/03-04)**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and NICHOLS CONSULTING ENGINEERS, CHTD ("CONSULTANT").

WHEREAS, CITY desires to secure professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation services during construction and other services for a project known as 2003/2004 Measure B Street Pavement Maintenance and City Street Maintenance of Effort (MOE) Project (ST-03/03-04); and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any, possess the professional qualifications and expertise to provide the required services and are licensed by the State of California to practice engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Larry Perlin to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

(a) CONSULTANT shall commence services upon receipt of written Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.

(b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A," CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"), and if so requested, CITY shall make this determination within fourteen (14) days of such request.

3. Design Schedule

The Design Schedule is set forth in the attached Exhibit "A-1."

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONSULTANT with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Eighty-Nine Thousand Three Hundred Fifty-Five and 00/100 Dollars (\$89,355.00) unless upon written modification of this Agreement. Notwithstanding the foregoing, the Director of Public Works may, at the Director's sole discretion, authorize additional services to be performed under this agreement at additional compensation.

All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

5. No Assignment or Sub-Contracting of Agreement

CONSULTANT bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement. Consultant shall not sub-contract any portion of the work contemplated and provided for herein without prior written approval of CITY.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be Approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

8. Standard of Workmanship

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

The plans, designs, specifications, estimates, calculations reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to

CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. Any expenses not so recorded shall be disallowed by CITY.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONSULTANT shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

14. Hold Harmless/Indemnification

To the extent permitted by law, CONSULTANT agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligent act, error, omission or negligence of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence or willful misconduct of CITY, its officers, employees, agents or representatives.

15. Insurance Requirements

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

16. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

17. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:                    Tony Bulan  
                                 Department of Public Works  
                                 CITY OF SUNNYVALE  
                                 P. O. Box 3707  
                                 Sunnyvale, CA 94088-3707

To CONSULTANT: Larry I. Perlin  
                                 NICHOLS CONSULTING ENGINEERS, CHTD  
                                 1101 Pacific Ave., Suite 300  
                                 Santa Cruz, CA 95060

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

18. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

19. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

20. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

21. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would conflict in any manner or degree with the performance of this Agreement.

22. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

23. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

24. Termination of Agreement

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

25. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract consultants are listed in the project work plan.

26. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

27. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in amendments to this Agreement.

28. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

29. Severability Clause.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

30. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

31. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

32. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:  
CITY CLERK

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

NICHOLS CONSULTING ENGINEERS, CHTD  
("CONSULTANT")

By \_\_\_\_\_

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_

\_\_\_\_\_  
Name/Title

## **EXHIBIT "A"**

### **2003/2004 MEASURE B AND MOE STREET PAVEMENT MAINTENANCE PROJECT (ST-03/03-04)**

#### **SCOPE OF WORK**

##### **1.0 PROJECT DESCRIPTION**

**1.1 Location** – On property owned by the City of Sunnyvale at various street site locations, as follows:

- a) Fir Avenue from Arbor to Worley
- b) Arques Avenue from Fair Oaks to Lastreto
- c) Arques Avenue from Sunnyvale to Morse
- d) Gloucester Court from Quail to end
- e) Fulton Avenue from Plaza to Gardner
- f) Sandia Avenue from Lawrence to Blazingwood
- g) Sycamore Terrace from El Camino Real to n/end
- h) Doon Court from Thunderbird to w/end
- i) Ferndale Avenue from Borregas to w/end
- j) Pecan Court from Revere to end
- k) Cypress Avenue from Fair Oaks to Worley
- l) Kifer Avenue from Wolfe to Fair Oaks
- m) Santa Coleta Court from Ferndale to s/end

**1.2 Project** – The project includes providing engineering design and support services for the City's 2003/2004 Measure B Street Pavement Maintenance and City Maintenance of Effort (MOE) Project.

The work includes consulting services during the design, bidding, and construction phases of the project.

##### **2.0 WORK TO BE PERFORMED**

The Consultant shall obtain all needed information, perform engineering analysis and design, and prepare detailed construction plans and specifications that are suitable for bidding and construction purposes. The Consultant shall obtain all required permits that are necessary to complete its work. The Consultant's scope includes all related work needed to complete the design including preparation of construction cost estimates, construction schedules, lists of equipment and material submittals; support during bidding; support during construction; and preparation of record drawings.

Throughout the design process, the Consultant shall maintain a close working relationship with City staff. Meetings with City staff shall be held at project kickoff and as needed. Monthly written progress reports are required. Meet with City staff to review all comments following the City's review of intermediate and final versions of the design. The Consultant shall meet with any outside agencies as necessary based on project requirements.

The Consultant shall submit intermediate versions of the plans and specifications at (approximately) 30%, 60%, and 90% completion (note requirements of Section 6.0., Deliverables). The Consultant shall obtain approval from any outside agencies for any other required permits. This process may require multiple submittals. After obtaining permits from all agencies, a 100% submittal shall be made to the City in accordance with Section 6.0, Deliverables. The Consultant shall prepare engineer's estimates for the probable cost of construction. A formal design presentation shall be made by the Consultant at approximately 60% design completion.

The Consultant is responsible for producing the project plans, technical specifications, and special provisions. The City will be responsible for final assembly and distribution of bid documents, and the bid solicitation.

Submit timely progress billings with sufficient detail to enable understanding and verification.

The Consultant's scope includes all related work needed to complete the design, such as pavement deflection tests and utility investigations, including locating striping and traffic loops, etc. towards the preparation of the improvement plans. These topics are discussed below.

Pavement Deflection Tests and Analysis. The Consultant shall conduct pavement deflection tests and all other necessary tests required for design purposes. The Consultant shall have the responsibility of determining the appropriate number of corings and tests. The Consultant shall submit required FWD data analysis and report on the results of the tests, and shall also develop pavement maintenance work recommendations for each of the street segments.

Utility Investigations. The Consultant shall secure information on all utilities and include such information on the project plans. Maps of the potable water, storm drain, and sewer systems are available from the City. All other utility information shall be obtained from the utility owners. Prior City projects have required the contractor to verify all utility locations by potholing prior to construction. This approach is acceptable, however, the Consultant may need

to conduct some potholing in order to identify utility locations that critically impact the engineering design.

Survey Work. The Consultant shall obtain the services of a licensed California Surveyor for all survey work such as, obtaining topographic information, cross-sections and profiles, locating utilities and monuments, preparing maps, etc. required for the project.

Encroachment Permits. The Consultant shall secure all required encroachment permits or easements.

**2.1 Kick-off Meeting.** Prepare an agenda and a list of questions and data required to be used as a working tool for the meeting. The goals of the meeting will include: (1) review of the scope of work, (2) establish lines of communication, (3) establish the project schedule and specific milestones, and (4) define design and operations criteria for the project.

**2.2 Detail Design.** Prepare a detailed work plan for the design phase work including tasks, roles, responsibilities, milestones, deliverables, and schedule. Maintain communication with the design project manager, subconsultants, and other involved persons and organizations by telephone, mail, fax, and electronic mail. The key tasks in the detail design phase shall be as follows:

**2.2.1** Gather necessary data and information

**2.2.2** Accomplish needed tests, analysis, and calculations.

**2.2.3** Determine existing conditions, construction, and permit requirements through contact with utility companies and other involved public agencies.

**2.2.4** Research product information, cost information, materials, and constructability.

**2.2.5** Prepare technical specifications for all construction. Prepare special provisions to be incorporated into the City's Standard Contract Documents.

**2.2.6** Prepare detailed construction cost estimates and construction project schedules. Update the construction cost estimates and construction project schedules as necessary.

**2.2.7** Review project progress at the 30%, 60%, 90%, and 100% completion

points.

2.2.8 Make a formal project presentation at the time of the 60% submittal.

2.2.9 Conduct and take/publish minutes for all design phase meetings.

2.2.10 Submit final submittals including electronic copies for the preparation of the Contract Documents.

**2.3 Services During Bidding.** Answer any technical questions during the bidding, attend the prebid conference (if any), and prepare addenda (if necessary) for distribution by the City. During the bidding period, the Consultant shall answer questions related to the design and provide technical input for addenda. All communications shall be directed through the City.

**2.4 Services During Construction.** The City's Public Works staff will have primary responsibility for construction management and inspection. The Consultant's point of contact shall be the city, not the contractor. The key tasks for the Consultant (and Subconsultants, if any) in this phase shall be as follows:

2.4.1 Attend progress meetings, including the preconstruction meeting.

2.4.2 Review and comment on Construction Schedules.

2.4.3 Review and comment on all technical submittals (and resubmittals), test reports, and vendor data called for in the construction contract documents and all proposed substitutions for conformance to drawings and technical specifications.

2.4.4 Provide technical responses to Requests for Information (RFI's) through the City.

2.4.5 Review and make recommendations for proposed changes to the contract (RFQ's/CCO's).

2.4.6 Make site visits and inspections, as required by the City.

2.4.7 Participate in the final inspection and development of the punch lists.

2.4.8 Perform any necessary regulatory inspections for certifying purposes (if required).

**2.4.9** Provide technical input, in case of design error or omission, into difficult or disputed subjects that have not progressed to a formal claim situation.

**2.5** Record Drawings. Prepare a set of final record drawings from marked up drawings generated by the Contractor or City or both.

### **3.0 REFERENCE DOCUMENTS**

The City of Sunnyvale's Standard Specifications consists of the City of Sunnyvale 2000 Standard Specifications for Public Works Construction, 2000 edition and Standard Details for Public Works Construction, 2000 Edition, Department of Public Works.

The following reference documents will be available to the Consultant:

1. The City of Sunnyvale 2000 Standard Specifications for Public Works Construction, 2000 edition and Standard Details for Public Works Construction, 2000 Edition, Department of Public Works.
2. City of Sunnyvale Standard Contract Documents.
3. Electronic copy of City Standard Cover Sheet & Border CADD Files.

### **4.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM**

The Consultant shall have an in-house Quality Assurance/Quality Control (QA/QC) Program in place to review the design throughout all stages of the project. In addition to the design review conducted by the Project Manager and the design team, there shall be separate design, coordination, and constructibility reviews conducted by a Final Reviewer who is an experienced, qualified engineer/architect not directly involved in the project, and independent of the design team. This Final Reviewer may be an in-house or subconsultant employee.

### **5.0 CONSULTANT'S PROJECT TEAM**

At the time of execution of the contract, the Consultant shall designate the members of the design team by name. The team members shall include, as a minimum, the Project Manager, Project Engineer/Architect, technical engineering/architectural staff, and Quality Assurance/Quality Control Final

Reviewer. Any proposed substitutions in the team subsequent to the execution of the contract are to be submitted to the City for review and acceptance or rejection. The City reserves the right to interview any person proposed for substitution prior to acceptance or rejection.

## **6.0 DELIVERABLES**

### **6.1 30% Submittal**

- a) Plans (5 sets of prints; 24" x 36", max. size).
- b) Outline of technical Specifications (3 hard copies).
- c) Preliminary construction cost estimate (3 copies).
- d) Preliminary construction schedule (3 copies).
- e) Preliminary pavement design report (3 copies).

### **6.2 60% Submittal**

- a) Plans (6 sets of prints; 24" x 36", max. size).
- b) Technical Specifications (3 hard copies).
- c) Special Provisions (3 hard copies).
- d) Updated construction cost estimate (3 copies).
- e) Updated construction schedule (3 copies).
- f) Written response to all comments from previous submittal.
- g) Design presentation (this is a comprehensive meeting).

### **6.3 90% Submittal**

- a) Plans (6 sets of prints; 24" x 36", max. size).
- b) Technical Specifications (4 hard copies).
- c) Special Provisions (4 hard copies).
- d) Final FWD data analysis and report (3 copies)
- e) Updated construction cost estimate (3 copies).
- f) Updated construction schedule (3 copies).
- g) List of submittals required by Technical Specifications (3 copies).
- h) Written response to all comments from previous submittal.
- i) Permits received to date, if any (2 copies). Consultant to retain the originals.

- 6.4** 100% Submittal *(Incorporating all previous corrections & comments by previous reviewers and other agencies with permitting responsibility).*
- a) Plans (6 sets of prints; 24" x 36", max. size).
  - b) Technical Specifications (3 hard copies).
  - c) Special Provisions including attachments (3 hard copies).
  - c) Updated construction cost estimate (3 copies).
  - d) Updated construction schedule (3 copies).
  - e) Updated list of submittals required by Technical Specifications (3 copies).
  - f) Written responses to all City comments, and/or other permitting agencies, if any (1 copy).
  - g) Schedule of Required Tests (2 copies).
  - h) Remaining permits from other depts./agencies, if any (2 copies).
- 6.5** Construction Submittal
- a) CADD construction plans (1 electronic copy on disk).
  - b) Plans (1 stamped and signed reproducible copy and 5 sets of prints; 24" x 36", max.).
  - c) **Technical Specifications** (1 unbound hard copy and 1 electronic copy). Electronic copy shall be one document (file) only, in MS Word; it must include all sections and everything else that appears in the technical specifications (e.g. diagrams, attachments, etc.). Numbering system should be consistent all through the specifications. **Special Provisions** (1 unbound hard copy and 1 electronic copy). Font utilized for Technical Specifications and for Special Provisions should be Arial, size 10. Spelling should have been checked before final document is sent to City.
  - e) Original (final) permit(s) obtained from any permitting agency involved in the project.
  - f) Provide QA/QC certification by Final Reviewer.
  - g) Updated Schedule of Required Tests (2 copies).
- 6.6** Record Drawings
- a) Revised vellum or mylar plans based upon the Contractor's representation of actual

construction (1 set; 24" x 36", max.).

- b) CADD plans based upon the Contractor's representation of actual construction (1 electronic copy).

## EXHIBIT B - COMPENSATION

The City shall compensate the Consultant for the Scope of Services provided, in accordance with the contract for Consultant Services.

### 1.0 BASIC COMPENSATION

1.1 For Basic Services, as described in Exhibit "A," Basic Compensation shall be computed as follows:

1.1.1 For Basic Services described, compensation for services shall be at a fixed fee not to exceed Eighty-Nine Thousand Three Hundred Fifty-Five and 00/100 Dollars (\$89,355.00).

1.1.2 Compensation for each phase shall be in proportion to the Basic Services provided and shall not exceed the following amounts per phase.

Kick-off and progress meetings	\$1,651.00
Pavement Structural Design	49,941.00
PS&E	33,862.00
Bid Period & Construction Support Services	<u>3,901.00</u>
Total	\$89,355.00

1.1.3 For Basic Services as described above, compensation shall be computed at the rates shown in Exhibit "B-1." The Consultant will issue a new schedule of rates effective March 1 of each year. This new fee schedule will not affect the not-to-exceed total agreement compensation.

1.1.4 Reimbursable Expenses such as sub-consultant services, reproduction, postage and handling, etc., are incorporated in each phase compensation, and shall be paid at cost.

### 2.0 COMPENSATION FOR ADDITIONAL SERVICES

2.1 For Additional Services of the Consultant as described in the Agreement, Compensation shall be computed on an hourly basis at the rates shown in Exhibit "B-1." Reimbursable expenses shall be paid at cost.

### 3.0 TERMS AND CONDITIONS

- 3.1 The City and the Consultant agree in accordance with the Terms and Conditions of this Agreement that: if the Scope of the Project or of the Consultant's Services is changed materially, the amounts of compensation shall be equitably adjusted. If the Consultant's Services are not completed within twenty-four (24) months, the rates and multiples set forth in this Agreement shall be adjusted to reflect normal salary review procedures of the Consultant.

# **Exhibit B-1** **NCE FEE SCHEDULE**

<b>A. Time Plus Expenses Basis</b>	<b>Hourly Rate</b>
Principal	\$190.00
QC/QA Manager	\$150.00
Project Manager	\$150.00
Senior Engineer	\$125.00
Project Engineer	\$100.00
Staff Engineer	\$ 80.00
Resident Construction Engineer	\$ 80.00
CADD Designer	\$ 75.00
Technician	\$ 75.00
Clerical	\$ 60.00
Expert Witness	\$ 500.00 (4 hour minimum)
Falling Weight Deflectometer with Operator (1/2 day minimum)	\$ 2,000/day
Falling Weight Deflectometer Mobilization/Demobilization	\$1.60/mile
NCE vehicles	\$ 60/day

A premium will be charged if the client's requirements make overtime work necessary.

## **B. Reimbursable Expenses**

Reimbursable expenses will be charged at cost. Mileage will be reimbursed at current federal rates. The following are examples of such expenses but are not limited to those shown:

- a. Actual travel and subsistence expenses including rental vehicles incurred by employees and principals when away from the home office on business connected with the client's work.
- b. Actual communication expenses, such as long distance telephone, telegraph, cable, courier, express and postage directly applicable to the client's work.
- c. Invoice costs for outside services directly applicable to the client's work, such as computer programming, special consultants, soils testing and laboratory services.
- d. Actual special drafting and stenographic supply costs directly applicable to the client's work, as distinguished from supplies and expenses applicable to administrative activities.
- e. Actual reproduction costs directly applicable to the client's work, such as blueprinting, photographs, multi-copy printing and binding.
- f. Miscellaneous direct costs applicable to the client's work.

## INSURANCE REQUIREMENTS FOR CONSULTANTS

## EXHIBIT "C"

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Consultant shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per occurrence.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers, except as follows: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Ref: Consultant Service Agreement for Complex Projects (Can be used in other consultant projects.)

Service Agreement Manual

City of Sunnyvale  
Risk & Insurance Management  
Policies/Consultants. Ins  
December 11, 2003